

REMARKS

This paper is submitted in response to the Office Action mailed on September 10, 2004. Claims 1-20 remain in the application. Applicants respectfully traverse the rejection of the submitted claims and requests reconsideration and allowance of claims 1-20 in light of the following arguments.

Claims 1-20 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 4,700,528 issued to Bernard in view of U.S. Patent No. 4,396,143 issued to Killy in further view of U.S. Patent No. 5,229,180 issued to Littmann. Bernard is directed to a method of forming a package with a heat shrinkable sheet. In particular, Bernard discloses an article (36) that is packaged in a heat shrinkable plastic sheet (26) while providing a handle (43) to facilitate carrying the package (44). The handle (43) is incorporated into the package (44) by using a length (32) of adhesive coated tape (28) applied to sheet (26). Upon heating of the sheet (26), access openings (41, 42) are provided on opposed sides of length (32) to allow a user to grasp handle (43) of package (44).

As the Office Action correctly points out, Bernard does not disclose a formed carton or scoring the plastic sheet. To fill one aspect of this void, the Office Action cites Killy as disclosing a carton (10) having convenience features, such as handle openings (22, 24) and dispenser (50), and containing a plurality of cans (52) which are bounded by the carton (10). To fill the other aspect of this void, the Office Action then cites Littmann as disclosing laser scoring a plastic sheet. Taken collectively, the Office Action then asserts that the present invention is obvious in light of these references. Applicants respectfully disagree for the reasons set forth below.

The Office Action does not establish a prima facie case of obviousness.

There is absolutely no teaching, suggestion or inference of modifying the Bernard patent by including a carton, such as that shown in Killy, and laser scoring the plastic as shown in Littmann. First, there is no teaching or suggestion of combining the Bernard reference with that of Killy. Bernard does not teach or suggest a carton having a convenience feature accessible to a user and containing a plurality of items. Additionally, Killy does not teach or suggest wrapping the carton (albeit having a convenience feature accessible to a user and containing a plurality of items) in a plastic sheet. There is no motivation for one of ordinary skill in the art to combine these references. The plastic sheet in Bernard creates a package and provides a handle for carrying the package. In Killy, the package is created by the carton, which also includes a handle. Thus, in essence, the carton in Killy takes the place of the plastic sheet in Bernard. In short, in Bernard, there is no teaching, suggestion or motivation for including a carton beneath the plastic and in Killy, there is no teaching, suggestion or motivation for including a plastic sheet over the carton.

Moreover, even assuming that combining the teachings of Bernard with that of Killy were proper, there is no teaching, suggestion or motivation for combining that disclosed by Littmann with the Bernard and Killy references. Littmann is generally directed to a package (10) comprised of a plastic sheet sealed together in a face-to-face relation to form a fin seal (17) therein. A lower surface of the sheet material includes a metal strip (19) and is positioned adjacent the fin seal (17). A laser forms a score line (18) above metal strip (19) and generally parallel to fin seal (17). The metal strip (19) reflects the laser light to produce a higher quality score line. The package

(10) also includes an adhesive tape strip (20) adjacent the score line (18). In operation, a consumer pulls the seal fin (17) to open the package (10) along score line (18). After the product has been used, the package (10) can be resealed by folding over the fin seal (17) onto the adhesive strip (20). There is no teaching, suggestion or motivation in Littmann to have a carton with a convenience feature inside the plastic sheet material.

There is no teaching, suggestion or motivation in Littmann, or the other two references relied upon, to form a score line in the plastic sheet material proximate to a convenience feature in the carton so that a user can access the convenience feature in the carton through the sheet material. In other words, the scoring of the film is positioned so as to correspond to a convenience feature in the carton. Both independent claims 1 and 13 specifically recite scoring the film proximate the convenience feature on the carton so that a user may access the convenience feature through the film. Again, the Office Action identifies no teaching in the art that would suggest the modification that is argued as obvious. For this reason, the rejection is improper and should be withdrawn.

The rejection is further improper because it used impermissible hindsight reconstruction to arrive at the claimed invention. In other words, the Applicants' claims have been used as a blueprint to try and combine bits and pieces of the prior art together to make the § 103 rejection. It must be recognized that a combination of prior art is improper and not obvious if the only suggestion or reason of combining the teachings of the prior art is found in the presented application. The Office Action admits that two claim elements/limitations are missing from the Bernard patent. Simply filling in this void with a second reference that generally shows a carton with

convenience features (such as the Killy reference) and yet a third reference that generally shows laser scoring a plastic sheet material (such as the Littmann reference) without the required teaching or suggestion to make the desired modification is improper. For this reason, the rejection is improper and the rejection should be withdrawn.

In addition to the above, the rejection of claims 5 and 13 is improper because the claims recite limitations that are not taught by the prior art. In particular, the Office Action asserts that Bernard discloses a package that is completely covered by the shrink wrap. Fig. 8 of that reference, however, clearly shows that the shrink wrap does not completely cover the package. This figure clearly shows a generally circularly-shaped opening on the front side of the package that would also presumably exist on the back side of the package that is not shown. In contradistinction, claims 5 and 13 specifically recite that the film substantially cover the entire carton. Bernard, or the other references relied upon, do not show this limitation. As such, the rejection of claims 5 and 13 is improper and should be withdrawn.

For the reasons stated above, independent claims 1 and 13 should be allowable. Moreover, as claims 2-12 and 14-20 depend from allowable independent claims 1 and 13, respectively, and further as each of these claims recite a combination of elements not taught or suggested by the prior art of record, Applicants submit that these claims are allowable as well.

CONCLUSION

In view of the foregoing response, this application is submitted to be in complete condition for allowance and early notice to this affect is earnestly solicited. If there is any issue that remains which may be resolved by telephone conference, the Examiner is invited to contact the undersigned in order to resolve the same and expedite the allowance of this application.

Applicants are of the opinion that no additional fee is due as a result of this response. If any additional charges or credits are necessary to complete this communication, please apply them to Deposit Account No. 23-3000.

Respectfully submitted,

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